

## **REMARKS**

With this Response, claims 12 and 23 are amended, and claims 17 and 18 are cancelled. Claims 4-8, 10-28, 42-49, and 51-56 are currently pending.

With the Office Action dated May 19, 2004, the Examiner rejected claims 17 and 18 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regards as the invention; rejected claims 4, 5, 23-25, 42-44, 48, 51, 53, and 54 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,753,051 to Tupper in view of U.S. Patent No. 4,741,150 to Braude; rejected claim 49 under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 42, and further in view of U.S. Patent No. 3,409,188 to Wright; rejected claims 10, 11, 12, 15-18, and 21 35 U.S.C. 103(a) as being unpatentable over Tupper in view of Braude and U.S. Patent No. 5,271,531 to Rohr et al.; rejected claims 6, 26, and 45 under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 5, 25, and 42, and further in view of Rohr; and rejected claim 22 under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 15, and further in view of Wright. Applicants respectfully traverse these rejections.

Applicants would like to thank the Examiner for acknowledging that claims 7, 8, 13, 14, 19, 20, 27, 28, 46, 47, 55, and 56 would be in allowable form if rewritten in independent form including all the limitations of the base claim and any intervening claims. In light of the foregoing arguments, Applicants respectfully submit that the base claims are in allowable form, and thus, claims 7, 8, 13, 14, 19, 20, 27, 28, 46, 47, 55, and 56 do not require further amendment.

The Examiner rejected claims 17 and 18 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. With the foregoing Amendment, Applicants cancel claims 17 and 18. Accordingly, Applicants request that the Examiner withdraw this rejection as moot.

The Examiner rejected claims 4, 5, 23-25, 42-44, 48, 51, 53, and 54 under 35 U.S.C. 103(a) as being unpatentable over Tupper in view of Braude. Applicant respectfully traverses the Examiner's 103(a) rejections. To establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations of must be taught or suggested by the prior art. MPEP 2143.03. Further, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. MPEP 2143.01.

Tupper fails to disclose at least a "second flap ... configured to latch the first flap in an open position" (claims 23, 53); a "second closure ... configured to latch the first closure in an open position" (claims 51, 54); a second flap pivotal to "a closed position covering the first flap and the second dispensing opening" (claim 23); a "second closure ... configured to cover the second dispensing opening" (claims 51 and 54); and a panel of "unitary construction" (claims 23, 51, 53, and 54).

First, the solid closure 20 disclosed by Tupper is not configured to latch the perforated cover 20a in an open position, as required by claims 23 and 54. In fact, Tupper teaches away from this limitation, as closures 20 and 20a rotate open in near-

perpendicular axes. Thus, closures 20 and 20a are not in physical contact when in an open position. Braude discloses several mechanisms for securing a flap in an opening position by affixing the flap to the drinking cup cover. However, one skilled in the art would not be motivated to combine these latching mechanisms with Tupper. Even if, *arguendo*, the latching mechanisms disclosed by Braude could be combined with the closures of Tupper, the latching mechanisms would be entirely ineffective at latching the first closure 20a in an open position, because the closures 20, 20a rotate away from each other. Thus, Braude fails to overcome this first deficiency of Tupper.

Secondly, the solid closure 20 disclosed by Tupper is not pivotal to a position covering the perforated closure 20a and the second dispensing opening (the perforations, themselves), as required by claims 23 and 54. Because the dimensions of closures 20 and 20a are "identical" (col. 4, lines 14-16), only a single closure can be in a closed position at a times. See, e.g., Fig. 10. Each closure is configured to close only the opening, sealably fitting spout 12 between inner wall 21 and outer wall 22 of closure 20, 20a (col. 3, lines 7-30). Thus, when perforated closure 20a is in a closed position, solid closure 20 will only rest at an angle against, rather than completely close, perforated closure 20a. Braude fails to disclose such an arrangement of multiple closures, and thus fails to overcome this second deficiency of Tupper.

Finally, the lid assembly disclosed by Tupper is not of unitary construction, as required by claims 23 and 54. In the Office Action, the Examiner alleged that it would have been obvious to form the panel, first flap, and second flap of unitary construction, because it would simply be a matter of simply forming a single article out of what had formerly been formed of two pieces. Applicants believe the Examiner has misapplied

this concept to the present invention. In order for the lid assembly disclosed by Tupper to be formed of unitary construction, at least *five* separate components would have to be combined in a single article. These components include at least frame member 37, rods 28 and 28a, and closures 20 and 20a. See Figs. 7 and 9. Another embodiment adds at least two swiveling rings 29 and 29a to the assembly. See Fig. 3. Thus, it would not have been obvious to one skilled in the art to simply form the elements disclosed by Tupper as a unitary construction. Given this deficiency, and those discussed above, the combination of Tupper and Braude fails to teach or suggest the patentable combination of elements disclosed by claims 23, 51, 53, and 54 of the present invention. Further, claims 4, 5, 42-44, and 48 depend from claim 54, and claims 24 and 25 depend from claim 23, and therefore disclose at least the same patentable combination of elements. Accordingly, Applicants request that the Examiner withdraw the rejection, and that claims 4, 5, 23-25, 42-44, 48, 51, 53, and 54 should be allowed.

The Examiner rejected claim 49 under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 42, and further in view of Wright. As discussed above with respect to claim 54, from which claim 49 depends, the combination of Tupper and Braude fails to teach or suggest at least a “second closure ... configured to latch the first closure in an open position”; a “second closure ... configured to cover the second dispensing opening”; and a panel of “unitary construction”. Wright fails to overcome the deficiencies of Tupper and Braude. Wright fails to disclose at least a “second closure ... configured to latch the first closure in an open position” and a “second closure ... configured to cover the second dispensing opening.” As required by claim 54 (and thus claim 49), the first closure is configured to “at least partially cover the

first dispensing opening,” having “a second dispensing opening.” The sifter panel 23 of Wright at least partially covers the opening in container 10. However, the pouring spout formed from side wings 27 and 28 are not configured to latch the sifter panel 23 in an open position. Nor is the pouring spout configured to cover sifter panel 23 and its “second dispensing opening.” Thus, the combination of Tupper, Braude, and Wright fail to teach or suggest the patentable combination of elements disclosed by claim 49. Accordingly, Applicants request that the Examiner withdraw the rejection, and that claim 49 should be allowed.

The Examiner rejected claims 10, 11, 12, 15-18, and 21 35 U.S.C. 103(a) as being unpatentable over Tupper in view of Braude and Rohr et al. For the same reasons discussed above with respect to claims 23, 51, 53, and 54, the combination of Tupper and Braude fails to teach or suggest at least “a panel of unitary construction;” a “second flap being configured to latch the first flap in an open position”; and “the second flap being configured to close the dispensing opening and to cover the first flap when both the first and second flaps are in a closed position,” as required by claim 12. Nothing in the Rohr et al. reference teaches or suggests these limitations. Rather, Rohr et al. discloses a dispensing closure comprising a valve assembly that opens when external pressure is applied to the container (See, e.g., col. 1, lines 55-60). Rohr et al. fails to overcome these deficiencies of Tupper and Braude.

Moreover, the Examiner admits that Tupper fails to disclose “a plurality of resilient members configured to receive a straw and maintain engagement with the straw.” The Examiner alleges that Rohr et al. discloses this limitation, but does not point to a particular passage or figure to support the assertion. Nothing in Rohr et al.

teaches or suggests this limitation. Spikes or protrusions (e.g., 115F in Fig. 22) are disposed about clamping surface 111F to “contribute to increased reaction forces for retaining the valve flange” (col. 13, lines 23-49), rather than to maintain engagement with a straw. In fact, Rohr teaches away from this limitation, since a straw could not even be used with the valve assembly of Rohr et al. Thus, Rohr et al. fails to disclose this further deficiency of Tupper and Braude. Given this deficiency, and those discussed above, the combination of Tupper, Braude, and Rohr et al. fails to teach or suggest the patentable combination of elements disclosed by claim 12 of the present invention. Further, claims 10, 11, 15, 16, and 21 depend from claim 12, and therefore disclose at least the same patentable combination of elements. Accordingly, Applicants request that the Examiner withdraw the rejection, and that claims 10, 11, 12, 15, 16, and 21 should be allowed.

The Examiner rejected claims 6, 26, and 45 under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 5, 25, and 42, and further in view of Rohr et al. For the same reasons as discussed above with respect to claims 23 and 54, the combination of Tupper and Braude fails to teach or suggest at least a “second flap ... configured to latch the first flap in an open position” (claim 23); a “second closure ... configured to latch the first closure in an open position” (claim 54); a second flap pivotal to “a closed position covering the first flap and the second dispensing opening” (claim 23); a “second closure ... configured to cover the second dispensing opening” (claims 51 and 54); and a panel of “unitary construction” (claims 23 and 54). For the same reason discussed above with respect to claim 12, Rohr et al. fails to overcome these deficiencies of Tupper and Braude. Moreover, also as discussed above, Rohr et al. fails

to teach or suggest “a plurality of resilient members configured to receive a straw and maintain engagement with the straw,” and thus fails to overcome this further deficiency of Tupper and Braude. Given these deficiencies, the combination of Tupper, Braude, and Rohr et al. fails to teach or suggest the patentable combination of elements disclosed by claims 6, 26, and 45 of the present invention. Accordingly, Applicants request that the Examiner withdraw the rejection, and that claims 6, 26, and 45 should be allowed.

The Examiner rejected claim 22 under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 15, and further in view of Wright. For the reasons discussed above with respect to claim 12, the combination of Tupper, Braude, and Rohr et al. fail to teach or suggest at least “a panel of unitary construction;” a “second flap being configured to latch the first flap in an open position”; and “the second flap being configured to close the dispensing opening and to cover the first flap when both the first and second flaps are in a closed position,” as required by claim 12 (and thus claim 22). For the same reasons discussed with respect to claim 49, Wright fails to overcome these deficiencies. Thus, the combination of Tupper, Braude, Rohr et al., and Wright fails to teach or suggest the patentable combination of elements disclosed by claim 22 of the present invention. Accordingly, Applicants request that the Examiner withdraw the rejection, and that claim 22 should be allowed

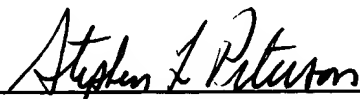
In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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